

ACCESS TO PUBLIC RECORDS ACT
Attorney General's Access to Public Records Guidelines for Police

_____ POLICE DEPARTMENT

ACCESS TO PUBLIC RECORDS ACT

R.I. GEN. LAWS SECTION 38-2-1 ET SEQ.

The _____ Police Department is committed to providing the public with access to public records, while protecting from disclosure information about individuals maintained that would constitute an unwarranted invasion of personal privacy. R.I. Gen. Laws Section 38-2-1. The _____ Police Department provides numerous public documents to the public, media and attorneys everyday in the ordinary course of business. However, for any person who does not desire to make an oral request, wishes to make a formal written request or the request needs clarification, please complete the written form

Pursuant to R.I.Gen. Laws Section 38-2-3(c.), the _____ Police Department has established the following procedure regarding access to public records:

Please inform the officer/clerk at the front desk that you wish to make a request for public records. _____ is the Public Records Officer for the _____ Police Department (telephone number xxx-xxxx). The hours for the Records Department are _____ to _____.

The officer/clerk will provide you with a form to complete, which lets this Department know the precise public documents you seek and assists us in processing your request in an expeditious manner.

If the public records are readily available, we will be more than happy to provide them. However, there are times/circumstances when the records will not be available at the time that you make the request. If the records are not readily available, they can either be mailed to you or you can pick them up on a designated date. The Access to Public Records Act grants a public body ten (10) business days to respond to your request. R.I.Gen. Laws Section 38-2-7(a). The Act further provides that "for good cause, this limit may be extended for a period not to exceed thirty (30) business days." We thank you in advance for your understanding if it is necessary, for good cause, to request this extension. Improper release of certain information could compromise the civil rights or personal safety of your fellow citizens, and we must review documents to prevent such harm.

Costs. The Access to Public Records Act gives you the opportunity to view and/or copy public records. The cost per copied page of written public documents will be _____ (not to exceed \$.15) for documents copyable on common business or legal size paper. You may elect to obtain public records in any and all media in which we are capable of providing them. The Act permits a reasonable charge for search and retrieval of documents. The hourly costs for a search and retrieval shall not exceed fifteen (\$15.00) per hour, with no charge for the first hour. We would be more than happy to provide you with an estimate. Upon a request, we will provide a detailed itemization of the costs charged for search and retrieval.

Public Records. A "public record" is defined as "documents, papers, ...or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Specifically with respect to police records, in addition to other records maintained by this Department that constitute "public records", the Access to Public Records Act deems public "[r]ecords relating to the management and direction of law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult." R.I. Gen. Laws Section 38-2-2(4)(i.) (D).

Redaction. Although a document may constitute a public record, there may be some information contained on the document that may be redacted/deleted as it is exempt from disclosure under R.I.Gen. Laws Section 38-2-2. In *Direct Action for Rights and Equality v. Gannon*, 713 A.2d 218 (R.I. 1998) and *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I.1982), the Rhode Island Supreme Court held that final reports on civilian complaints of police brutality were subject to disclosure in redacted form. In addition, the Rhode Island Supreme Court has stated that "in passing the APRA, the General Assembly intended to limit access to certain documents in order to avoid disclosure of confidential information to protect individuals from invasion of their privacy." *Providence Journal Company v. Kane*, 577 A.2d 661, 663 (R.I.1990). "There is no public interest to be weighed in disclosure of nonpublic records." *Id.* A "balancing of interests arises only after a record has first been determined to be a public record." *Id.*

Exemptions. The Access to Public Records Act exempts some records from public disclosure. See, R.I.Gen. Laws Section 38-2-2(4). The following are some explanations as to why a document or part thereof may be exempt from disclosure:

(A)(I) ...all personal or medical information relating to an individual in any files, -- including information relating to medical or psychological facts... R.I.Gen. Laws Section 38-2-2(4)(i.)(A)(I);

(C.) ... records of juvenile proceedings before the family court

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information may (a) reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could constitute an unwarranted invasion of personal privacy (d.) could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority, or private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual..

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state rule of court, law or regulation. (i.e. information regarding juveniles, etc.).

Please be advised that this is not a complete list of documents that the Act exempts from disclosure. For a full list see R.I.Gen.Laws Section 38-2-2.

Appeal of Denial. Any person or entity denied the right to inspect a record of a public body by the Public Records Officer may petition the chief administrative officer of that public body for review of the determinations made by his or her subordinates. Any petitions from a denial should be made to Chief _____. A final determination whether or not to allow public inspection will be made within ten (10) business days after the submission of the review petition. R.I.Gen. Laws Section 38-2-8.

Complaint to the Attorney General. If the chief administrative officer determined that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the Attorney General. (150 South Main Street, Providence, RI 02903, telephone 274-4400) or may retain private counsel for the purposes of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained. The Act provides that "[t]he court shall impose a civil fine not exceeding one

thousand dollars (\$1,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and shall award reasonable attorney fees and cost to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to [provide the] public records at no cost to the prevailing party; provided further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant." R.I.Gen. Laws Section 38-2-9(d).

We hope this message has been of assistance.

_____ POLICE DEPARTMENT

REQUEST FOR RECORDS UNDER THE ACCESS TO PUBLIC RECORDS ACT

Date _____ Request Number _____

Name (optional) _____

Address (optional) _____

Telephone (optional) _____

Requested Records: _____

If these records are not readily available at the time of your request, please advise whether you desire to:

_____ pick up the records or _____ regular mail

Office Use

Request taken by: _____ Request Number _____

Date: _____ Time: _____

Records to be available on: _____ Mail _____ Pick Up _____

Records provided: _____

Costs: _____ copies _____ search and retrieval

XXX Police Department - Access to Public Records Request Receipt

If you desire to pick up the records, they will be available on _____ at the front desk. If, after review of your request, the Department determines that the requested records are exempt from disclosure for a reason set forth in R.I.Gen. Laws Section 38-2-2(4)(i.)(A) through (W), the Department reserves its right to claim such exemption.

Note: If you chose to pick up the records but did not include identifying information on this form (name, etc.), please inform the officer/clerk at the front desk of the date you made the request, records requested and request number _____.

Thank you.

_____ POLICE DEPARTMENT

PUBLIC RECORDS REQUEST

The _____ Police Department has instituted the following procedure to help you obtain public records.

The Public Records Officer is _____. Phone Number -----

The regular business hours of the Records Department are ----- to ----- . If you come in after regular business hours, please complete the Public Records Request Form at the front desk and it will be given to the Public Records Officer the following day.

The Department may ask you for identification, or for the reason for your request, as its regular course of business. However, you are not required to provide identification or the reason you seek the information, and your right to access public records will not depend upon providing identification or reasons.

In order to ensure that you are provided with the public records you seek in an expeditious manner, we ask that you complete the Public Records Request Form located at the front desk. You may also obtain at the front desk a handout on the Access to Public Records Act, which summarizes the procedures and your rights to access public records.

There are times when the public records you seek are not available at the time of your request. Please be advised that the Access to Public Records Act gives a public body ten (10) business days to respond. We appreciate your understanding and patience.

If you feel that you have been denied access to public records, you have the right to appeal to Police Chief _____. If you are still not satisfied, you may file a complaint with the Department of the Attorney General, 150 South Main Street, Providence, RI 02903 or file suit in Superior Court.

The ----- Police Department is committed to providing you with public records in an expeditious and courteous manner.

_____ POLICE DEPARTMENT

ACCESS TO PUBLIC RECORDS

INTERNAL PROCEDURE

The _____ Police Department shall appoint a Public Records Officer.

The _____ Police Department shall provide the name of its Public Records Officer, business address and phone number to the Department of Attorney General.

The _____ Police Department adopts the language of the public notice placard (See Exhibit A) and agrees to maintain it in a prominent place in the lobby of the police station.

The _____ Police Department adopts the Access to Public Records Procedure. See Exhibit B.

The _____ Police Department agrees to maintain copies of the Access to Public Records Procedure at its front desk for distribution to the public.

The _____ Police Department adopts the Public Records Request Form. See Exhibit C.

The _____ Police Department agrees to maintain copies of the Public Records Request Forms at its front desk and shall make them readily available, as well as pens or pencils, to the public for completion.

The _____ Police Department understands and respects the right of the public to access public records, and will treat citizens requesting public records with courtesy consistent with the Department's Rules and Regulations.

The _____ Police Department recognizes that it must respond to a public records request within ten (10) business days. If, due to the request, we must seek an extension of an additional twenty (20) business days, we must inform the requester within the initial ten (10) day period of the need for an extension. If we do not send the extension letter or respond to the request within the initial ten (10) days, our inaction is considered a denial and we may have waived our defenses if a court action is filed.

If we need advice as to whether a document is a "public record" we will promptly contact our city or town solicitor. If he or she is unable to provide an answer, he or she may contact the Civil Division of the Department of Attorney General for an advisory opinion. If the city or town solicitor is for some reason unavailable, the Police Chief may contact the Department of Attorney General directly.

The Public Records Officer or his/her designee should review the initial arrest report and other public documents to ensure that the privacy rights of individuals are maintained and informants or law enforcement techniques are redacted and not disclosed, utilizing the attached reference guide "checklist". See Exhibit D.

The Public Records Officer shall maintain a central file of all Public Records Request Forms. The file will contain the completed request forms once the request has been fulfilled or responded to. It is understood that in many instances the _____ Police Department provides public records that are readily available to the requester without requiring them to complete the Public Records Request Form.